

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

NICK LAMSA, an individual,

Plaintiff,

vs.

Case No. 2005-0592-NO

NEW DESIGN CONSTRUCTION
CORP., a Michigan Corporation, and
EAST SIDE BUILDING MATERIALS CO.,
a Michigan Corporation,

Defendants.

OPINION AND ORDER

Defendant New Design Construction Corp., (hereinafter "Defendant New Design"), has filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff requests the Court deny Defendant New Design's motion.

This lawsuit arises out of an accident that allegedly occurred on April 23, 2004, at a condominium construction site being built and owned by Defendant New Design. Plaintiff claims that he was visiting the construction site to pick up his cousin, who was working as a drywall subcontractor, when he was injured by uninstalled drywall that was improperly stacked near a door. Plaintiff alleges that Defendant New Design failed to maintain the premises in a reasonably safe condition. Plaintiff alleges that Defendant East Side delivered approximately 15 sheets of dry wall material to Defendant New Design's premises, and placed them in an unsafe position. Plaintiff alleges that he suffered a fractured ankle as a result of the falling drywall. On December 29, 2005, Plaintiff filed his first amended complaint against Defendants, alleging premises liability against Defendant New Design in count 1; negligence against East Side



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Building Materials in count 2; contractor liability against Defendant New Design in count 3; and inherently dangerous activity against Defendant New Design in count 4.

Defendant New Design filed the instant motion on April 19, 2006. Defendant New Design contends that summary disposition is appropriate, as it did not owe a duty to Plaintiff. Defendant New Design also contends that it is impossible for Plaintiff's claim to be supported by evidence at trial, based upon the Court's ruling that Plaintiff failed to demonstrate a question of fact that Defendant East Side Building Materials performed its duties in a negligent manner. Plaintiff contends that Defendant New Design may be held liable as a general contractor through the inherently dangerous doctrine, the common work area doctrine, and as the owner of the premises.¹

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

In order to establish a prima facie case for negligence, plaintiff must show that defendant owed a legal duty to plaintiff, that defendant breached that duty, that plaintiff suffered damages, and that defendant's breach of duty was the proximate cause of plaintiff's damages. *Riddle v*

¹ It appears that the parties have misinterpreted the Court's March 16, 2006 *Opinion and Order* granting Defendant East Side Building Materials' motion for summary disposition. The Court did not find as a matter of law that Plaintiff was a licensee; the Court found a question of fact existed on this issue.

McLouth Steel Products Corp, 440 Mich 85; 485 NW2d 676 (1992). Duty is an obligation to conform to a specific standard of care toward another as recognized under the law. *Halbrook v Honda Motor Co, Ltd*, 224 Mich App 437, 440-441; 569 NW2d 836 (1997). Historically, Michigan has recognized three common-law categories for persons who enter upon the land or premises of another: (1) trespasser, (2) licensee, or (3) invitee. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; (2000). A business owner's duty depends upon the status of the person on the land. *Id.*

In the case at hand, Defendant has only provided argument on its potential liability based upon its relationship as the general contractor of the construction project. Defendant has failed to argue that Plaintiffs' claims of premises liability and inherently dangerous activity should be dismissed. Consequently, these claims survive, and the Court will only address the issue raised by Defendant New Design.

It is well established that "when an owner or general contractor hires an independent contractor to perform a job, the owner or general contractor may not be held liable in negligence to third parties or employees of the independent contractor." *Candelaria v BC General Contractors, Inc*, 236 Mich App 67, 72; 600 NW2d 348 (1999). In *Ormsby v Capital Welding, Inc*, 255 Mich App 165, 173; 660 NW2d 730 (2003), overruled *Ormsby v Capital Welding, Inc*, 471 Mich 45; 684 NW2d 320 (2004) the Court stated that there were three exceptions to this general rule: (1) situations where the general contractor retains control of the work to be performed by the independent contractor; (2) circumstances where the injury arose from a readily observable and avoidable danger in a common work area that created a high degree of risk to a significant number of workers; and (3) where the work that the independent contractor performs is inherently dangerous.

The Court is satisfied that Defendant New Design's motion for summary disposition of Plaintiff's claims based upon the common work area doctrine should be granted. The Court has previously found that Plaintiff failed to establish a question of fact that Defendant East Side performed its duties in a manner where it would be foreseeable that someone would be injured. (See March 16, 2006 *Opinion and Order*). Plaintiff has failed to provide the Court with any additional evidence to demonstrate that a high degree of risk existed in a common work area. Consequently, Defendant New Design's motion for summary disposition on this issue should be granted.

Based upon the reasons set forth above, Defendant New Design Construction Corp.'s motion for summary disposition is GRANTED IN PART. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

Dated: June 2, 2006

DONALD G. MILLER
Circuit Court Judge

CC: John R. Tatone
Stuart G. Eavenson

DONALD G. MILLER
CIRCUIT JUDGE

JUN 2 - 2006

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CARMELLA SABAUGH, COUNTY CLERK

BY:  Court Clerk